

Date: August 28, 2008

TO: THE MUNCIE BAR ASSOCIATION AND THE
GENERAL PUBLIC

NOTICE FROM THE DELAWARE CIRCUIT COURT

The following Local Rules have been adopted by the Delaware County Board of Judges and submitted for modification:

Local Rule Governing the Storage, Processing, Disposition of Drug
Forfeitures and All Other Property Held as Evidence

Any comments you may have regarding the attached modifications or deletions must be received by September 29, 2008. Comments may be submitted in writing to:

The Honorable Marianne Vorhees, Presiding Judge
Delaware Circuit Court No. 1
c/o Lana L. Scroggins, Court Administrator
100 W. Washington Street
Muncie, IN 47305
765-747-7734

This Rule will filed with the Supreme Court of Indiana.

STATE OF INDIANA)
) SS:
DELAWARE COUNTY)

IN THE DELAWARE CIRCUIT COURT

**Order Deviating from the Schedule Established by
the Indiana Supreme Court**

In Re: Local Rule LR18-AR00-DLR-0810

The Judges of the Delaware Circuit Court find pursuant to Trial Rule 81(D) good cause exists to deviate from the schedule established for the adoption of local rules by the Indiana Supreme Court, whereby:

It is in the best interests of the Delaware County Courts and all law enforcement agencies within Delaware County to have clear, consistent guidelines within which to dispose of forfeited assets and other evidence. Therefore, the judges have adopted for immediate use a local rule governing the storage, processing and disposition of drug forfeitures and all other property held as evidence.

Comments may be submitted to: The Honorable Marianne Vorhees, Presiding Judge of the Delaware Circuit Court No. 1 at 100 W. Washington Street, Muncie, IN 47305 or Lana L. Scroggins, Court Administrator, 100 W. Washington Street, Muncie, IN 47305.

The Clerk of Delaware County shall post this rule in its office and on its website for a period of thirty (30) days commencing as directed on August 27, 2008.

All of Which is So Ordered this 28th day of August, 2008.

Signed Signatures:

Marianne Vorhees, Judge
Delaware Circuit Court No. 1

Richard A. Dailey, Judge
Delaware Circuit Court No. 2

Robert L. Barnet, Judge
Delaware Circuit Court No. 3

John M. Feick, Judge
Delaware Circuit Court No. 4

Chris M. Teagle, Judge
Delaware Circuit Court No. 5

Local Rule No.: LR18-AR00-DLR-0810

Local Rule Governing the Storage, Processing, Disposition of Drug Forfeitures and All Other Property Held as Evidence

The Judges of the Delaware Circuit Court hereby issue the following Local Rule in relation to storing, processing, disposition of drug forfeitures and all other property held as evidence:

ASSETS

1. All assets seized by state, city, county, and town law enforcement officers pursuant to I.C. 34-24-1-1 and I.C. 34-24-1-2 shall be booked into the property room of the respective agency in the following manner: the Indiana State Police will utilize their own, secure facilities as their property room; otherwise, the agency with the originating case report number shall determine the property room to which any evidence seized shall be consigned, which shall be either the Muncie City Police Department property room or the Delaware County Sheriff's Department property room. The property shall be inventoried and kept until adjudication of the civil drug forfeiture case pursuant to I.C. 34-24-1-2. For racketeering forfeitures, see I.C. 34-24-2-2. Adjudication of the civil drug forfeiture should not commence until the criminal case has been disposed. Where possible, both actions should be filed in the same court. Regardless, a court handling a criminal action shall be notified of the companion civil forfeiture action at time of filing and *vice versa*.

ADJUDICATED DRUG FORFEITURES

2. All drug forfeitures must be adjudicated pursuant to I.C. 34-24-1-4. See I.C. 34-24-2-1 *et seq.* for racketeering forfeiture procedures. At the hearing, the legitimacy of the forfeiture must be established by a preponderance of the evidence. See also I.C. 34-24-1-3. As part of any judgment in favor of the State, City, or County, the court shall determine the amount of law enforcement costs, which shall include the costs of the police agencies as well as the costs of prosecuting the civil and criminal actions. See I.C. 34-6-2-73. "*Any excess in value of the proceeds or the money over the law enforcement costs [shall] be forfeited and transferred to the treasurer of state for deposit in the common school fund.*" I.C. 34-24-1-4(d)(2) (D).

NON-CASH ASSETS

3. Non-cash assets may *if appropriate* be delivered for a period not to exceed three years to the city, county, or town law enforcement agency, which seized the property. After that period, the property shall be delivered to the Sheriff for public sale. I.C. 34-24-1-4(c). A vehicle may be accepted by the governmental unit if appropriate for law enforcement use. For example, in determining whether to retain a luxury vehicle, the governmental unit should determine whether it has a bona fide use; further, when a vehicle ceases to be useful, as where a vehicle is initially needed for an undercover operation, but, once used, has become known to the criminal element and cannot be used again, an earlier sale than the three year period is appropriate. Normally, an inventory of such assets should be made (which should correspond with the property booked into the property room), and the property delivered to the Sheriff for the next public sale (at least once a year). The case shall not be closed until a report of the sale of all such property, together with proposed disposition in accord with the original determination of law enforcement costs, including those due the Criminal Justice Institute Grant Fund Program Income Account, is filed with the court, and such report is approved and made a part of the court's record. The forfeiture order allowing use of non-cash assets shall require the sale thereof and a

report to be made to the court within three years. The cash shall be receipted into the Clerk's trust account for payment into the appropriate general fund account of the city, county, or town, and, when appropriate, to the state treasurer for the common school fund. Cash ordered forfeited by the court should likewise be receipted into the Clerk's trust account. When the monies are paid over to the appropriate general fund, the receipt (from the city) or the quietus (from the county) should be filed with the court, as well as the receipt from the state treasurer in the case of payment to the common school fund.

Note: At present, federal forfeiture funds shared with a local law enforcement agency are to be sent to the governmental unit of which that agency is a part. Disbursement of the funds are to be by the fiscal body of that unit (City Council for Muncie, County Council for Delaware County) in accord with Federal guidelines.

MATCHING FEDERAL GRANTS

4. In the event that the law enforcement agencies are recipients of a Federal grant, e.g., the Criminal Justice Institute Grant to the Muncie-Delaware County Drug Task Force, the court forfeiture judgments involving law enforcement costs should first divide the grant amount by the total budget for the recipient joint drug task force, which will result in a percentage (for example, a grant of \$30,000 divided by a total budget of \$300,000 equals 10%). The court, in assessing law enforcement costs, shall first award the appropriate percentage to the Grant Fund Program Income Account; then, the court shall divide the remainder of law enforcement costs proportionally between the units of government, and, if there be any surplus, the same shall be awarded to the state common school fund. Again, the Clerk of the Court would receive the monies into the Clerk's Trust Account and make disbursements as indicated in paragraph 3 above.

ATTORNEY FEES

5. The person prosecuting civil forfeitures shall be paid pursuant to one of two written agreements: 1) in the event the estimated value of the assets to be forfeited are of a value of \$10,000.00 or less, the written agreement shall provide for a fee of 25% of the sale value of the assets; or 2) in the event the estimated value of the assets to be forfeited are of a value of more than \$10,000.00, the written agreement shall provide for an hourly fee to be paid to the person providing the service with the hourly fee set out in the agreement. A copy of the agreement shall be provided to the executive of the unit of government for which the services are being provided. The person providing the services under the written contract should not be a deputy prosecutor. Existing Federal Guidelines mandate "*there should be no appearance that law enforcement decisions are motivated by the prospect of receiving forfeited funds.*" In any event, the fee in each forfeiture case shall be conditioned on court approval using the factors established in Rule 1.5 (a) of the Rules of Professional Conduct.

DISPOSITION OF ABANDONED PROPERTY

6. Disposition of property under I.C. 35-33-5-5(c)(1) notes that "[f]ollowing the final disposition of the cause. . . , property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property." After a ninety-day abandonment provision, the law enforcement agency holding the property must dispose of it through public auction; however, "[the] proceeds shall be paid into the county general fund." The better practice would appear to call for notification of the rightful owner as part of a supplemental proceedings in the trial court, and, when the rightful owner cannot be located within the statutory period, to have the court (1) confirm that reasonable efforts have been made to ascertain ownership or the

rightful owner has been duly notified to take possession and has not done so, (2) determine that ninety (90) days have passed, (3) authorize the Sheriff to conduct the public sale, and (4) order the Sheriff to report the proceeds to the court and deposit the same into the Clerk's Trust Account, with the Clerk paying the proceeds over to the county general fund and filing the quietus with the court.

CLERK-TRUST REPORT

7. The Clerk shall also make quarterly Trust Fund reports of receipts and disbursements to the courts, the prosecutor, the state, city, county, and town law enforcement agencies, and the fiscal bodies and fiscal officers of the units of government involved.

Signed Signatures: August 28, 2008

Marianne Vorhees, Judge
Delaware Circuit Court No. 1
Robert L. Barnet, Judge
Delaware Circuit Court No. 3
Chris M. Teagle, Judge
Delaware Circuit Court No. 5

Richard A. Dailey, Judge
Delaware Circuit Court No. 2
John M. Feick, Presiding Judge
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